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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 ANTONIO RUIZ-VEGA,

11 Petitioner,

12 vs.

13 UNITED STATES OF AMERICA,

14 Respondent.

CIV. CASE NO. 07cv2275 BTM
CRIM. CASE NO. 06cr2634 BTM

**ORDER DENYING § 2255 MOTION
AND DENYING CERTIFICATE OF
APPEALABILITY**

15 On December 4, 2007, Antonio Ruiz-Vega (Petitioner) filed a motion to vacate, set
16 aside, or correct sentence pursuant to 28 U.S.C. § 2255 ("2255 motion"). Petitioner claims
17 that (1) he should be granted a downward departure for post-conviction rehabilitation; and
18 (2) he received ineffective assistance of counsel at sentencing and therefore his sentence
19 did not account for all mitigating factors. For the reasons set forth below, Petitioner's motion
20 is **DENIED**.

21 On January 11, 2007, Petitioner entered into a plea agreement with the Government.
22 Petitioner agreed to plead guilty to a single count of knowingly and intentionally possessing
23 with intent to distribute approximately 8.53 kilograms of methamphetamine. In the plea
24 agreement, the parties agreed that Petitioner's adjusted offense level under the Sentencing
25 Guidelines was 25. Because Petitioner was in Criminal History Category I, his Guideline
26 sentence was between 57 to 71 months. The petitioner further agreed that he "waives to the
27 full extent of the law, any right to appeal or to collaterally attack the conviction and sentence
28 . . . unless the Court imposes a custodial sentence greater than the high end of the guideline

1 range.” On January 19, 2007, Petitioner, represented by counsel, entered a plea of guilty
2 on this count before Judge Moskowitz. On May 15, 2007, the Court entered judgment
3 sentencing Petitioner to 57 months of custody and three years of supervised release. The
4 Court’s sentence was therefore on the low end of the agreed-upon guideline range.

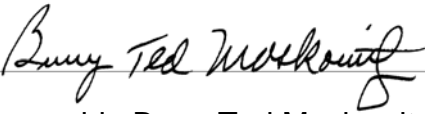
5 Petitioner’s claims for relief set forth in his 2255 motion are barred because Petitioner
6 waived his right to collaterally attack his sentence. A waiver of appeal and/or collateral attack
7 of a conviction is enforceable if voluntarily made. United States v. Pruitt, 32 F.3d 431, 433
8 (9th Cir. 1994). Upon review of the record, the Court is satisfied that Petitioner knowingly
9 and voluntarily waived his right to collateral attack. At the plea hearing on January 19, 2007,
10 the Court explained, “Ordinarily a defendant has a right to appeal or collaterally attack a
11 sentence and conviction asking this court or a higher court to vacate, modify, reverse, or
12 reduce a sentence or conviction based upon legal errors or violation of your rights. It says
13 in the plea agreement that, so long as the court imposes a jail sentence that is not greater
14 than the high end of the guideline range or the statutory mandatory minimum term, if
15 applicable, recommended by the government under the agreement, that you will be waiving,
16 giving up your right to ever appeal or attack the sentence and conviction.” (Transcript of
17 1/19/07 hearing, 11:15 -12:1) Petitioner indicated that understood the waiver of appeal and
18 collateral attack and agreed to the plea agreement. (Id. at 12:3-11) Petitioner also
19 represented to the Court that his guilty plea was voluntary. (Id. at 12:12-13:20) Although
20 Petitioner now claims in his 2255 motion that his counsel “misrepresented and misadvised
21 the plea” to defendant, he fails to support these allegations with any facts or specific
22 examples. To the contrary, Petitioner indicated to the Court that he went over each page of
23 his plea agreement carefully with his attorney and initialed each page indicating that he
24 understood its contents. (Id. at 12:3-11) The Court therefore finds that Petitioner voluntarily
25 entered into the guilty plea and thereby waived his rights to collaterally attack his sentence.

26 For the reasons discussed above, Petitioner’s motion to vacate, set aside or correct
27 sentence pursuant to 28 U.S.C. § 2255 is **DENIED**. The Court also denies a Certificate of
28 Appealability in this case.

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IT IS SO ORDERED.

DATED: December 20, 2007


Honorable Barry Ted Moskowitz
United States District Judge